IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR

1. S.B. Sales Tax Revision No.488/1999
C.T.O., Spl. Circle, Ajmer Vs. Shree Cement Ltd., Beawar

2. S.B. Sales Tax Revision No.473/1999
C.T.O., Spl. Circle, Ajmr Vs. Shree Cement Ltd.

3. S.B. Sales Tax Revision No.472/1999
C.T.O., Spl. Circle, Ajmer Vs. Shree Cement Ltd., Beawar

Date of Judgment :: 30th July, 2007

Hon'ble Dr. Vineet Kothari, J.

Mr.Vinay Goyal for the petitioner - revenue.
Mr.Vivek Singhal for the respondent – assessee.

REPORTABLE

1. These three revision petitions have been filed by the petitioner – revenue against the common order of the Rajasthan Sales Tax Board, Ajmer dated 30.8.1997 whereby the Tax Board upholding the order of the learned Deputy Commissioner (Appeals) and rejecting the appeals filed by the revenue held that penalty under Section 10A of the Central Sales Tax Act, 1956 (for short 'the Act') could not be imposed upon the respondent assessee for the alleged mis-use of declaration in Form 'C' prescribed under Section 8(3)(b) of the said Act for the purchase of iron and steel for the use in plant and machinery in different departments for production of cement by the respondent assessee.

2. The case of the respondent assessee before the authorities below was that the said iron and steel purchased on concessional rate of 4% against declaration Form 'C' for the years 1989-90 and 1990-91 was used for erection, repairs and maintenance works of Lime Stone, Crusher, Hopper, Conveyors, Raw Mills, Coal Mills, Crane Gaiteri, Cline Feed, Pre-heater Cyloz, and Cement Mills etc. and that the assessee was entitled to purchase these goods at the concessional rate of 4% in accordance with Rule 13 read with Section 8(3)(b) of the Act as these goods were used by the assessee “in the manufacture or processing of goods”.

3. Mr. Vinay Goyal, learned counsel appearing for the revenue, has urged that on a strict interpretation of Rule 13 of the Central Sales Tax (Registration & Turnover) Rules, 1957 (for short 'the Rules'), the iron and steel purchased by the respondent assessee cannot be said to be the goods intended for use by the assessee either as raw materials, processing materials, plant & machinery, equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale, since the respondent assessee is manufacturing cement and, therefore, these goods could not be purchased at concessional rate against declaration in Form 'C',

therefore, imposition of the penalty under Section 10A of the Act was justified. He relied upon the judgment of Hon'ble Supreme Court in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. The Sales Tax Officer, Kanpur and Another **(1965) 16 STC 563 (SC)**. He also relied upon two more judgments, namely, **(2000) 125 STC 216 (Allah.) and (1992) 85 STC 42 (Orissa)**.

4. As against this, Mr. Vivek Singhal, learned counsel appearing for the respondent assessee, urged that both the appellate authorities have concurrently and rightly held in favour of the assessee respondent that the goods in question were purchased for use in the manufacture and processing of goods, namely, cement by the respondent assessee and, therefore, the purchase of these goods against the declaration Form 'C' could not attract any penalty. He further submitted that so long as these goods were admittedly included in the registration certificate granted by the assessing authority in favour of the respondent assessee, the revenue was estopped from raising such a plea and for this reason also the penalty in question was rightly set aside by the appellate authorities under the Act and there was no force in these revision petitions filed by the revenue. He also relied upon the aforesaid judgment of the Hon'ble Supreme Court in the case of J.K. Cotton Spinning & Weaving Mills Co.

Ltd. (supra). The other judgments relied upon by him are as under:-

1. Member, Board of Revenue, West Bengal Vs. Phelps And Co. (P) Ltd. (1972) 29 STC 101 (SC)

2. Chowgule & Co. Pvt. Ltd. and Another Vs. Union of India and Others (1981) 47 STC 124 (SC)

3. The State of Gujarat Vs. Minu Chemical Pvt. Ltd. (1982) 50 STC 339

4. Vegetable Industries Complex Vs. Commissioner of Trade Tax., U.P., Lucknow (2006) 143 STC 308 (Allah.)

5. Lt. Governor, Delhi & Ors. Vs. Ganesh Flour Mills Co. Ltd. (1973) 31 STC 354 (SC)

6. (1973) 73 STC 283 (Gauhati).

5. For considering the controversy in question a bare look at the provisions of the Act in the first instance would be necessary, therefore, Section 8(3)(b) of the Act and Rule 13 are reproduced hereunder:-

> "8(3) The goods referred to in [***] sub section (1)-
> (a) (Omitted)
>
> (b) [...] are goods of the class specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power".

Rule 13 of the C.S.T. Rules reads as under:-

> "Rule 13 – The goods referred to in clause (b) of sub-section (3) of section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, [machinery, plant] equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power".

6. The Hon'ble Supreme Court in th case **J.K. Cotton Spinning & Weaving Mills Co. Ltd.** (supra) held that the expression "in the manufacture of goods" in section 8(3)(b) should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within expression "in the manufacture of goods". The Court, therefore, concluded that if, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, the equipment would be regarded as intended for *use in the manufacture of goods* for sale and such a test, in our judgment, is satisfied by the expression "electricals". This would

of course not include electrical equipment not directly connected with the process of manufacture. Office equipment such as fans, coolers, air-conditioning units, would not be admissible to special rates under section 8(I).

7. The Hon'ble Supreme Court in a later decision in the case of **Chowgule & Co. Pvt. Ltd. and Another Vs. Union of India and Others (1981) 47 STC 124 (SC)** referring to its earlier decision in the case of **Indian Copper Corporation (1965 16 STC 259 (SC)** held that the assessee in that case was a company which mined copper and iron-ore from its own mines, transported the ore to its factory and manufactured finished products from the ore for sale. There were several questions which arose for consideration before the court in regard to the assessee's claim for inclusion of certain items of goods in its certificate of registration and one of them was whether the locomotives and motor vehicles used for removing ore from the place where the mining operations were concluded to the factory where the manufacturing process was going on, could be said to be goods intended for use in the manufacture or processing of goods for sale within the meaning of section 8(3)(b) and rule 13. This Court held that they were goods falling within this description so as to be entitled to inclusion in the certificate of registration of the assessee. Then the

Hon'ble Supreme Court proceeded to hold that these reasons apply with equal force in the present case and strongly support the conclusion that the machinery, vehicles, barges and other items of goods purchased by the assessee for use in carrying the mined ore from the mining site to the riverside and from the riverside to the Marmagoa harbour fall within the description of goods intended for use in processing of ore for sale within the meaning of section 8(3)(b) and rule 13. If any of these items of goods are purchased by the assessee as being intended for use as “machinery, plant, equipment, tools spare parts, accessories, fuel or lubricants” in carrying the mined ore from the mining site to the riverside and from the riverside to the Marmagoa harbour, they would qualify for inclusion in the certificate of registration.

8. The Hon'ble Supreme Court in **Lt. Governor Vs. Ganesh Flour Mills Co. Ltd. (1973) 31 STC 354 (SC)** held that the material referred to in section 8(3)(c), according to its plain meaning, should be such as are used for the packing of goods for sale. Once the intention of using the materials for packing of goods for sale is proved, the requirements of section 8(3)(c) would be satisfied. The fact that tin sheets and tin plates have to be subjected by the respondent to the process of cutting and moulding into tin containers would not take

them out of the category of materials intended for being used for the packing of goods for sale. Thus, the Court held that the purchase of tin sheets and tin plates was covered under Section 8(3)(c) of the Act and these items were liable to be included in the registration certificate of the assessee.

9. The Hon'ble Supreme Court in **Member, Board of Revenue, West Bengal Vs. Phelps and Co. (P) Ltd. (1972) 29 STC 101** even held that the hand gloves sold by the manufacturer of industrial gloves to the dealers for the purpose of being used by their workers engaged in hot jobs and in handling corrosive substance in the course of manufacture of goods for sale was entitled to exemption under Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941 as these gloves could be said to have been used in the manufacture of goods for sale within the meaning of the said provisions. The judgment in in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. (supra) was applied by the Hon'ble Supreme Court in this case.

10. The Allahabad High Court in **Vegetable Industries Complex Vs. Commissioner of Trade Tax, U.P., Lucknow (2006) 143 STC 308** held that the purchase of steel plate and steel tubes for repairing machinery against Form 'C' did not amount to misuse of

declaration Form 'C' and penalty 10A of the Act was not attracted in such circumstances.

11. Now, the judgments cited by learned counsel for the revenue may be discussed in brief hereunder; in **Ipitata Sponge Iron Ltd. Vs. State of Orissa and Others (1992) 85 STC 42**, the Hon'ble Orissa High Court was dealing with a case where penalty under Section 10(b) was imposed on the ground that although refractories were not included in the petitioner's certificate of registration, it had purchased them at concessional rate on the false representation that they were. The petitioner's explanation was (a) that since the certificate of registration itself mentioned items such as cement, steel, etc., as intended for use in the setting up of the sponge iron plant, the allegation that the goods were not utilized in the manufacture of goods for sale was unsustainable, and (b) that the refractories were covered by entry 25 in the certificate which read “rotary kiln with inlet and outlet goods, etc.”. The explanation was rejected on a writ petition filed by the assessee. The Court held that a rotary kiln is not a saleable commodity which could be purchased as a finished product. It is constructed. Refractories are essential for the rotary kiln to be operative. When the Sales Tax Officer certified that the petitioner could purchase a rotary kiln at a concessional rate, it is

understood that the various parts which would go to make a rotary kiln could be purchased at a concessional rate. However, the Court held that the items, cement and building materials, and survey equipment and public address system would not be covered by the expression “goods intended for use in the manufacture” occurring in section 8(3)(b) of the Central Sales Tax Act, 1956. The facts of the said case are entirely distinguishable and are not applicable in the facts of the present case. The said case is, therefore, not applicable to the present case.

12. Similarly, the case decided by the Allahabad High Court in **The Kisan Sahkari Chini Mills Ltd. Vs. Commissioner of Sales Tax, U.P., Lucknow (2002) 125 STC 216**, the Hon'ble Allahabad High Court held that the cement which was required by the dealer, a manufacturer of sugar, was for use in the construction of the factory building or foundation could not be said to be either for use directly or even remotely in the manufacture of finished goods. Similarly, steel and paints too were required only in the repairs of the boiler and protection of machinery and could not be said to be used even indirectly in the manufacture or processing of goods for sale. Therefore, they did not fall within the ambit of Rule 13 of the Rules. Again the facts of this case, with great respects, are distinguishable

and are not applicable in the facts of the present case.

13. In the present case, there is no dispute that the goods iron and steel are included in the registration certificate of the respondent assessee which the respondent assessee is entitled to purchase at concessional rate against declaration Form 'C'. Their use for erection, repairs and maintenance of the plant and machinery by which the cement is manufactured by the respondent assessee is also not in dispute. The contention of learned counsel for the revenue that the goods in question should fall strictly within the definition of “raw materials, processing materials, machinery, plant or equipment etc. used in Section 13 of the Rules does not call for any narrow or pedantic approach on the part of the assessing authority. If admittedly these goods are used for keeping the plant and machinery in a fit and running condition, they are indirectly used in the manufacture or processing of goods and are mentioned specifically in the registration certificate of the assessee, is sufficient to reject this contention of learned counsel for the revenue. As a matter of fact, the revenue is estopped from raising this plea so long as these goods continue to be included in the registration certificate. There does not appear to be any reason also to remove the same from the list of goods to be used for manufacture and processing of the goods for sale.

14. This Court is of the firm and clear opinion that the iron and steel purchased by the respondent assessee for erection, repairs and maintenance of the plant and machinery employed for manufacture of cement by the respondent assessee clearly and squarely falls within the four corners of Rule 13 read with Section 8(3)(b) of the C.S.T. Act. Therefore, question of imposition of penalty on the alleged misuse of declaration Form 'C' could not arise in the present case. The appellate authorities were, therefore, justified in setting aside the penalty imposed upon the respondent assessee.

15. In view of this, these revision petitions filed by the revenue are found to be devoid of merit and the same are, accordingly, dismissed. No order as to costs.

[**Dr. Vineet Kothari**],**J.**

S.S.**Jr.P.A.**
I.Nos.H/58,59&62